

REFERENCE TITLE: vulnerable adults; financial abuse

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2809

Introduced by

Representatives Mason, Aguirre A, Barnes, Bradley, Cajero Bedford, Chase, Downing, Gorman, Landrum Taylor, Nelson, O'Halleran, Paton, Pierce, Sinema, Smith: Alvarez, Anderson, Biggs, Boone, Brown, Burns J, Hershberger, Huffman, Jones, Kirkpatrick, Konopnicki, Lujan, McClure, McComish, McLain, Murphy, Pearce, Prezelski, Weiers JP, Yarbrough, Senators Martin, Tibshraeny, Verschoor

AN ACT

AMENDING SECTIONS 13-1802 AND 46-456, ARIZONA REVISED STATUTES; RELATING TO INCAPACITATED AND VULNERABLE ADULTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 13-1802, Arizona Revised Statutes, is amended to
3 read:
4 13-1802. Theft; classification
5 A. A person commits theft if, without lawful authority, the person
6 knowingly:
7 1. Controls property of another with the intent to deprive the other
8 person of such property; or
9 2. Converts for an unauthorized term or use services or property of
10 another entrusted to the defendant or placed in the defendant's possession
11 for a limited, authorized term or use; or
12 3. Obtains services or property of another by means of any material
13 misrepresentation with intent to deprive the other person of such property or
14 services; or
15 4. Comes into control of lost, mislaid or misdelivered property of
16 another under circumstances providing means of inquiry as to the true owner
17 and appropriates such property to the person's own or another's use without
18 reasonable efforts to notify the true owner; or
19 5. Controls property of another knowing or having reason to know that
20 the property was stolen; or
21 6. Obtains services known to the defendant to be available only for
22 compensation without paying or an agreement to pay the compensation or
23 diverts another's services to the person's own or another's benefit without
24 authority to do so.
25 B. A person commits theft if the person knowingly takes control,
26 title, use or management of an incapacitated or vulnerable adult's assets or
27 property through intimidation, ~~or~~ deception OR UNDUE INFLUENCE, as defined in
28 section 46-456, while acting in a position of trust and confidence and with
29 the intent to deprive the incapacitated or vulnerable adult of the asset or
30 property.
31 C. The inferences set forth in section 13-2305 apply to any
32 prosecution under subsection A, paragraph 5 of this section.
33 D. At the conclusion of any grand jury proceeding, hearing or trial,
34 the court shall preserve any trade secret that is admitted in evidence or any
35 portion of a transcript that contains information relating to the trade
36 secret pursuant to section 44-405.
37 E. Theft of property or services with a value of twenty-five thousand
38 dollars or more is a class 2 felony. Theft of property or services with a
39 value of three thousand dollars or more but less than twenty-five thousand
40 dollars is a class 3 felony. Theft of property or services with a value of
41 two thousand dollars or more but less than three thousand dollars is a class
42 4 felony. Theft of property or services with a value of one thousand dollars
43 or more but less than two thousand dollars is a class 5 felony. Theft of
44 property or services with a value of two hundred fifty dollars or more but
45 less than one thousand dollars is a class 6 felony. Theft of any property or

1 services valued at less than two hundred fifty dollars is a class 1
2 misdemeanor, unless such property is taken from the person of another, ~~or~~ is
3 a firearm or is a dog taken for the purpose of dog fighting in violation of
4 section 13-2910.01, in which case the theft is a class 6 felony.

5 F. A person who is convicted of a violation of subsection A, paragraph
6 1 or 3 of this section that involved property with a value of one hundred
7 thousand dollars or more is not eligible for suspension of sentence,
8 probation, pardon or release from confinement on any basis except pursuant to
9 section 31-233, subsection A or B until the sentence imposed by the court has
10 been served, the person is eligible for release pursuant to section
11 41-1604.07 or the sentence is commuted.

12 Sec. 2. Section 46-456, Arizona Revised Statutes, is amended to read:
13 46-456. Duty to an incapacitated or vulnerable adult; financial
14 exploitation; civil and criminal penalties;
15 exceptions; definitions

16 A. A person who is in a position of trust and confidence to an
17 incapacitated or vulnerable adult shall act for the benefit of that person to
18 the same extent as a trustee pursuant to title 14, chapter 7, article 3.

19 B. A person who is in a position of trust and confidence and who by
20 intimidation, ~~or~~ deception **OR UNDUE INFLUENCE** knowingly takes control, title,
21 use or management of an incapacitated or vulnerable adult's asset or property
22 with the intent to permanently deprive that person of the asset or property
23 is guilty of theft as provided in section 13-1802.

24 C. A person who violates subsection A or B of this section is subject
25 to damages in a civil action brought by or on behalf of an incapacitated or
26 vulnerable adult that equal up to three times the amount of the monetary
27 damages.

28 D. A person who violates subsection A or B of this section forfeits
29 all benefits with respect to the estate of the deceased, incapacitated or
30 vulnerable adult, including an intestate share, an elective share, an omitted
31 spouse's share, an omitted child's share, a homestead allowance, an exempt
32 property allowance and a family allowance. If the incapacitated or
33 vulnerable adult died intestate, the decedent's intestate estate passes as if
34 the person who committed the violation disclaimed that person's intestate
35 share.

36 E. ~~The provisions of~~ Section 46-455, subsections **E**, F, G, H, I, K, L,
37 M and P also apply to civil violations of this section.

38 F. Subsections A, C, D and E of this section do not apply to an agent
39 that is any of the following:

40 1. A bank, financial institution or escrow agent licensed or certified
41 pursuant to title 6.

42 2. A securities dealer or salesman registered pursuant to title 44,
43 chapter 12, article 9.

44 3. An insurer, including a title insurer, authorized and regulated
45 pursuant to title 20.

- 1 G. For the purposes of this section:
2 1. "Deception" means that a person deceives an incapacitated or
3 vulnerable adult by knowingly doing any of the following:
4 (a) Creating or confirming a false impression in an incapacitated or
5 vulnerable adult's mind.
6 (b) Failing to correct a false impression that the person is
7 responsible for creating or confirming in an incapacitated or vulnerable
8 adult's mind.
9 (c) Making a promise to an incapacitated or vulnerable adult that the
10 person does not intend to perform or that the person knows will not or cannot
11 be performed. A person's failure to perform a promise is not by itself
12 sufficient proof that the person did not intend to perform the promise.
13 (d) Misrepresenting or concealing a material fact that relates to the
14 terms of a contract or an agreement that the person enters into with the
15 incapacitated or vulnerable adult or that relates to the existing or
16 preexisting condition of any of the property involved in a contract or an
17 agreement.
18 (e) Using any material misrepresentation, false pretense or false
19 promise to induce, encourage or solicit an incapacitated or vulnerable adult
20 to enter into a contract or an agreement.
21 2. "Intimidation" includes threatening to deprive an incapacitated or
22 vulnerable adult of food, nutrition, shelter or necessary medication or
23 medical treatment.
24 3. "Position of trust and confidence" means that a person is any of
25 the following:
26 (a) ~~One~~ A PERSON who has assumed a duty to provide care to the
27 incapacitated or vulnerable adult.
28 (b) A joint tenant or a tenant in common with an incapacitated or
29 vulnerable adult.
30 (c) ~~One~~ A PERSON who is in a fiduciary relationship with an
31 incapacitated or vulnerable adult including a de facto guardian or de facto
32 conservator.
33 (d) A PERSON WHO HAS GAINED SUPERIORITY OR INFLUENCE OVER AN
34 INCAPACITATED OR VULNERABLE ADULT OR THE INCAPACITATED OR VULNERABLE ADULT'S
35 ASSETS BECAUSE THE INCAPACITATED OR VULNERABLE ADULT HAS PLACED TRUST IN THE
36 PERSON'S FAITHFUL INTEGRITY.
37 4. "UNDUE INFLUENCE" MEANS ANY OF THE FOLLOWING:
38 (a) USING EMOTIONAL MANIPULATION OR EXPLOITING A VICTIM'S
39 VULNERABILITY TO GAIN ASSETS WITHOUT THE KNOWING CONSENT OF THE VICTIM.
40 (b) TAKING AN UNFAIR ADVANTAGE OF ANOTHER'S WEAKNESS OF MIND OR BODY.
41 (c) TAKING A GROSSLY OPPRESSIVE AND UNFAIR ADVANTAGE OF ANOTHER'S
42 NECESSITIES OR DISTRESS.